was impermissibly retroactive under *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988). If respondents' contention were correct, however, the only proper relief would be to invalidate Ruling 97-2, which would remove any basis for holding that the Ruling triggered mandatory reopening. In any event, Ruling 97-2 is not impermissibly retroactive as applied to hospitals with open cost reports or pending appeals for prior cost years because the Ruling was *favorable* to them. Ruling 97-2's bar to reopening of closed cost reports simply reflects the settled principle that a new rule of law applies only to cases pending on direct review. *E.g.*, *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 214 (1995).

By requiring the reopening of as many as 2380 cost reports in the more than 275 cases pending in the district court, the court of appeals has imposed extraordinary burdens and potential liability that would not have arisen if the Secretary had simply plowed ahead with litigation and lost in every circuit or in this Court. Because acquiescence is intended to be a substitute for continued pursuit of litigation, the Secretary's decision to acquiesce on a nationwide basis—to save providers, the government, and the courts from further litigation burdens—should not result in penalizing the Secretary and the Medicare Trust Fund. Such a rule could not help but chill the sound and flexible administration of federal programs.

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For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition for a writ of certiorari should be granted.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General

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